

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**SHARON DENISE LEE,**

**Plaintiff,**

**v.**

**COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,**

**Defendant.**

) **CASE NO. 1:17 CV 2708**  
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)  
) **JUDGE DONALD C. NUGENT**  
)  
) **Magistrate Judge Kathleen Burke**  
)  
) **MEMORANDUM OPINION**  
) **AND ORDER**

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Kathleen Burke. (Docket #18.) On December 29, 2017, Plaintiff, Sharon Denise Lee, filed her Complaint (Docket #1) challenging the final decision of the Commissioner of Social Security denying her applications for Supplemental Security Income (“SSI”) and Disability Insurance Benefits (“DIB”). Pursuant to Local Rule 72.2, the case was referred to Magistrate Judge Burke.

On November 30, 2018, the Magistrate Judge issued her Report and Recommendation. (Docket #18.) The Magistrate Judge recommends that the Court REVERSE AND REMAND the Commissioner’s decision for further consideration of Lee’s physical impairments, determining that without further analysis of the medical evidence regarding the worsening of Lee’s foot

impairment in the period following review by State agency physicians, it cannot be determined whether the sedentary RFC is supported by substantial evidence. The Magistrate Judge found no error, however, in the ALJ's assessment of Lee's mental health impairments. Objections to the Report and Recommendation were to be filed within 14 days of service. No objections were filed.

### **Standard of Review for a Magistrate Judge's Report and Recommendation**

The applicable standard of review of a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case de novo. FED. R. CIV. P. 72(b) states:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b) addresses only the review of reports to which objections have been made; it does not indicate the appropriate standard of review for those reports to which no objections have been properly made. The Advisory Committee on Civil Rules commented on a district court's review of *unopposed* reports by magistrate judges. In regard to subsection (b) of Rule 72, the advisory committee stated: "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72 advisory committee's notes (citation omitted).

The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): "It does not appear that Congress intended to require district court review of a magistrate

judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings."

### **Conclusion**

The Court has carefully reviewed the Report and Recommendation and agrees with the findings set forth therein. The Report and Recommendation of Magistrate Judge Burke (Docket #18) is ADOPTED. The Commissioner's decision is hereby REVERSED AND REMANDED IN PART and AFFIRMED IN PART.

The Commissioner's decision is hereby REVERSED AND REMANDED for further consideration of Plaintiff, Sharon Denise Lee's physical impairments only.

The Commissioner's decision denying SSI and DIB as it relates to Plaintiff, Shannon Denise Lee's asserted mental health impairments is supported by substantial evidence and is hereby AFFIRMED.

IT IS SO ORDERED.

  
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DONALD C. NUGENT  
United States District Judge

DATED: December 27, 2018